

**STATEMENT OF R. DAVIS LAYNE  
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OCCUPATIONAL SAFETY AND HEALTH  
BEFORE THE  
SUBCOMMITTEE ON NATIONAL SECURITY, EMERGING  
THREATS, AND INTERNATIONAL RELATIONS  
COMMITTEE ON GOVERNMENT REFORM  
UNITED STATES HOUSE OF REPRESENTATIVES**

**MAY 19, 2003**

Mr. Chairman and Members of the Subcommittee:

Thank you for this opportunity to testify about the Occupational Safety and Health Administration's (OSHA) role in dealing with anthrax at United States Postal Service (USPS) facilities and lessons learned from anthrax contamination, detection and remediation at the Wallingford, Connecticut postal facility.

As you know, OSHA's mission is to assure safe and healthful working conditions for America's working men and women. The Occupational Safety and Health Act (the OSH Act) requires each employer to furnish to each of his employees conditions of employment and a place of employment that are free from recognized hazards that are causing or are likely to cause death or serious harm. A 1998 revision to the Act expanded the definition of "employer" to include the United States Postal Service (USPS). Since 1998, the OSH Act has applied to the USPS in the same manner as it does to any other employer.

Assuring worker safety and health is not only a critical element in everyday work but also a vital part of our Nation's domestic preparedness and emergency response efforts -- an

essential component of our Nation's homeland security strategy. OSHA assists in domestic preparedness and response activities, such as the activities related to the anthrax contamination at the USPS facility in Wallingford.

OSHA's primary concern with emergency preparedness efforts is to ensure that worker safety and health are effectively addressed. The Agency's existing structures and programs also provide focus and expertise to increase emergency preparedness in the workplace and among responders. In this capacity, after the workplace threat of anthrax was first identified, the Agency published several anthrax-related documents on our website, including an Anthrax Matrix that offers basic advice and suggests protective measures that we believe will reduce the risk of exposure in light of concerns about the presence of anthrax spores in the workplace. Most recently, we published a Model Health & Safety Plan for Clean-up of Facilities Contaminated with anthrax spores.

In September and October 2001, letters containing anthrax spores were mailed to news media personnel and Congressional offices and contaminated several US Postal Service facilities. In November of that same year, a woman in Connecticut died from exposure to anthrax spores, spurring an investigation that was directed by the Connecticut State Health Department with the assistance of the Centers for Disease Control and Prevention (CDC). The investigation identified anthrax-contaminated mail that had been processed in the USPS Southern Connecticut Processing and Distribution Center at Wallingford as the likely source of the anthrax responsible for her death. An Incident Response Team made up of representatives from government agencies with responsibility for law

enforcement, environmental safety, bioterrorism, public health and safety and emergency management coordinated the investigative and cleanup activities at the Wallingford facility and analyzed and interpreted the findings of these activities. OSHA was not a part of this team and was not involved in the activities at Wallingford at this time.

The Incident Response Team, with the aid of a contractor hired by USPS, conducted surface sampling at the Wallingford facility in late November 2001, reporting results to USPS in early December 2001. The purpose of the sampling was to determine which locations in the facility were contaminated with anthrax spores so that cleanup activities could be directed efficiently. In the January/February 2002 time frame, the American Postal Workers Union (APWU) asked the USPS for copies of all anthrax test results and documents related to testing. The USPS gave APWU a spreadsheet with a list of the surface sample results that indicated for each sample whether anthrax was found or not found, but did not provide quantitative results. Subsequently, the APWU learned that the USPS had records associated with each positive sample. The APWU requested these records on several occasions.

OSHA had been working with the USPS United Command Center throughout the anthrax crisis and had been giving technical assistance with sampling and decontamination of the Brentwood postal facility in Washington, D.C. and another facility in Trenton, New Jersey. Because of this involvement, in April 2002, USPS asked OSHA to become involved in sampling and decontamination of the high-bay areas of the Wallingford facility. At USPS's request, OSHA staff provided technical advice to a USPS contractor

on sampling for anthrax exposure in the high-bay areas. OSHA staff also reviewed the USPS Health and Safety Plan for cleanup of anthrax contamination of those areas and provided oversight of the implementation of the health and safety plan during the cleanup of the high-bay areas. Our role, at that time, was one of technical assistance.

On May 29, 2002, the APWU filed a formal complaint with OSHA's Bridgeport Area Office, alleging that the USPS in Wallingford was not complying with 29 CFR 1910.1020 (Access to Employee Exposure and Medical Records). On May 31, 2002, APWU filed a second complaint against the USPS in Wallingford, alleging an inadequate hazard assessment in violation of 29 CFR 1910.132 (Personal Protective Equipment).

OSHA's regulation on Access to Employee Exposure and Medical Records provides employees and their designated representatives the right of access to relevant exposure and medical records. The OSHA regulation cited in APWU's second complaint, Personal Protective Equipment, requires an employer to conduct a certified hazard assessment, determine needs for personal protective equipment based on the hazard assessment, provide clean and appropriate personal protective equipment, and train the employees in the use of the equipment. APWU asserted in its May 31st complaint letter that USPS did not provide a copy of the certified and signed hazard assessment as required by Sections 1910.132(d)(1) and (2). On June 5, 2002, in response to these complaints, OSHA's Bridgeport Area Office initiated an inspection of the USPS.

During this inspection, managers for USPS explained that they had encountered several problems that would make release and interpretation of the quantitative data collected in November and December of 2001 difficult if not impossible. (These data were collected before OSHA's involvement with this facility.) USPS believed that the November/December sampling data could not be validated for several reasons. First, three different sampling methods were used and there was no method of correlating results taken by these different methods. Second, the method used to collect a number of the samples was not recorded. Third, the extent of the surface area wiped or vacuumed for each sample was not measured or recorded, making it impossible to obtain any meaningful quantitative information from the sample. The Incident Response Team stated that it was reluctant to release data that could not be validated, and advised the USPS that the only useable data related to the investigation were the qualitative data supplied to the APWU on February 6, 2002.

On September 4, 2002, during the OSHA inspection, USPS provided APWU with the requested records. Following the inspection, on October 7, 2002, OSHA sent a letter to the USPS notifying it that, although citation was not warranted, USPS's "[f]ailure to effectively communicate" with its employees "require[s] attention." OSHA typically sends this type of letter when an inspection discloses safety or health deficiencies that are not cited. Because the inspection had been initiated by a complaint from the APWU, OSHA also notified the union of the inspection results. When the union exercised its statutory right to request an informal review of OSHA's findings, OSHA provided additional explanation in letters dated November 26, 2002 and February 19, 2003.

A number of factors contributed to OSHA's decision not to cite USPS for the delay in providing detailed exposure records. The anthrax crisis was a unique event, involving an ongoing multi-agency criminal investigation into the source of the anthrax spores. USPS notified the employees of the contamination as soon as it was discovered, and took appropriate action to protect the employees from anthrax illness. In addition, at the time of the inspection, OSHA's Area Office believed that USPS did not realize that it had the requested records in its possession, and that USPS had provided its employees with those records shortly after it discovered them.

OSHA has initiated several actions since the anthrax crisis and the events at Wallingford. To help protect public health and safety by providing the most current information available throughout the Federal Government, and sharing national experience in responding to intentional releases of anthrax spores in urban environments, OSHA participated in the development of the National Response Team's document, "Technical Assistance for Anthrax Response." This document provides the most current information available from the Federal Government and shares experiences in responding to intentional releases of anthrax spores in urban environments. It addresses, among other things, improved methodologies that OSHA adapted for anthrax detection before and after cleanup, as well as methodologies to minimize inconsistencies related to sampling methods, increase the ability to validate sample results, and conduct comparative analysis of areas sampled. The use of these methodologies could eliminate some of the sampling problems experienced at Wallingford.

Most recently, OSHA has participated in last week's TOPOFF exercise, and is now evaluating the effectiveness of our role. OSHA is also actively participating with other Federal, local, State and private organizations to develop a sound emergency preparedness and response system to protect America's homeland.

We continue to develop further operational and procedural guidance for our regional administrators and staff. The regional offices are presently establishing local infrastructures and completing the groundwork necessary to participate in emergency response activities across the Nation.

In conclusion, we all know that this is a difficult time for our country. We, as an Agency, have learned a lot from our participation in the events at the World Trade Center, the Pentagon, and the anthrax incidents at the USPS facilities. Our Agency is working diligently to ensure that any future OSHA response is built on the lessons we have learned as well as the successes we have had. In this way we can most effectively contribute our talents to the Nation's emergency preparedness and response to catastrophic events. Worker safety and health is a critical component of any response, recovery and remediation operation. OSHA has demonstrated that we have the technical expertise and organization to ensure protection of workers; however, we are continually looking for ways to improve our performance.

I would be pleased to address your questions.

